FEB 10 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1829

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1982

WILLIAM CALLAHAN,
Petitioner

v.

DAVID YOUNG,
Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the arbitrary placement of the defendant in the prisoners' dock at his state court trial violated his right to due process of law in the circumstances of this case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
REASONS WHY PETITION IS OPPOSED	1
CONCLUSION	2

TABLE OF AUTHORITIES

Page

Commonwealth v. Moore, 379 Mass. 106, 393 N.E.2d 904 (1979)..... 1

Estelle v. Williams, 425 U.S. 501 (1976)..... 1

STATEMENT OF THE CASE

Respondent concurs with the Statement of the Case and Statement of the Facts set forth in the petition.

REASONS WHY THE PETITION IS OPPOSED

Despite petitioner's protestations to the contrary, the United States Court of Appeals for the First Circuit applied a constitutional analysis in this case which conforms with the controlling decisions of this Court. The First Circuit's holding was carefully drawn and narrow.

> We hold that under all the circumstances of this case--particularly in light of appellant's previously decorous behavior during incarceration and a prior trial, as well as the prospect of a trial involving much testimony concerning conduct of appellant over a substantial period--it was constitutional error for the trial court, without any finding that restraint was necessary, over appellant's constitutional objection, to deny appellant's motion to allow him to sit at counsel table rather than in the prisoner's dock. Appendix A, pp. 19-20.

The First Circuit meticulously followed this Court's analysis in Estelle v. Williams, 425 U.S. 501 (1976). The First Circuit, as required by the Williams case, evaluated the likely effects of the arbitrary use of the prisoners' dock based on reason, principle, and common human experience. As in Williams, the First Circuit noted that the American Bar Association's Standards for Criminal Justice disapproved the practice. As in Williams, the First Circuit noted that exceedingly few jurisdictions retained the practice.[1] As in Williams, the First Circuit found no significant state interest in the

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[1]Even Massachusetts has abandoned the practice of arbitrary placement in the prisoners' dock. Commonwealth v. Moore, 379 Mass. 106, 393 N.E.2d 904 (1979). Use of the dock is proper only when security is required and the dock is the least restrictive measure available.

procedure absent a need for security; and, there was no security need here.

This case does not present any special or important reason for this Court to exercise its discretion and grant a review on writ of certiorari.

CONCLUSION

For the reasons stated above, this Court should deny the petition for writ of certiorari.

Respectfully submitted,
By respondent's attorney,

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Dated: 6/9/83